IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

CRL.A.No. 1530 of 2007()

CC.804/2001 of JUDL. MAGISTRATE OF FIRST CLASS COURT, KODUNGALLUR

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APPELLANT:

STATE OF KERALA REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
(THE SUB INSPECTOR OF POLICE, VALAPAD)

BY PUBLIC PROSECUTOR SRI. THOMAS JOHN AMBOOKKAN

RESPONDENTS:

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1. BABU, S/O. RAMAKRISHNAN, PANAKKAL HOUSE, KAZHIMBRAM, VALAPAD.

2. SINGH, S/O. ASOKAN, PANAKKAL HOUSE, KAZHIMBRAM, VALAPAD.

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON 23/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NO.1530 OF 2007

Dated this the 23rd day of August, 2007.

JUDGMENT

This appeal is filed by the State against the judgment in C.C.No.804/2001 on the file of the Judicial Magistrate of First Class, Kodungallur. The prosecution case against the respondents/accused was that on 19.7.2001 at about 10 a.m the accused with a common intention to attack PW1, the defacto complainant, came to the varanda of a tea shop and A1 wrongfully restrained PW1 and caused an injury on him with an iron rode. A2 also caused hurt on PW1. Further it was alleged that A1 had stolen the gold chain worn by PW1. To prove the above charge, prosecution examined 12 witnesses, out of whom, four were occurrence witnesses including the injured-PW1. After considering the prosecution evidence, the trial court found that the prosecution has not proved the entire facts before the court as it has come out in evidence that the incident started at the varanda of a tea shop and continued up to the residence of PW1 and there ensured a quarrel between PW1 and the respondents/accused. There was also evidence to show that there occurred a push and pull between

PW1 and the respondents/accused. Though PW1 had got a definite case before the court that the incident had taken place at the varada of the shop but, the other two witnesses namely Pws 2 and 6 have not stated the starting of the incident. Further, the trial court found that there were contradictions in the evidence of these prosecution witnesses. The medical evidence adduced by the prosecution would not also show any injury on the body of PW1. The finding entered by the trial court was that MO1 was recovered on the statement given by the 1st accused, that too, after the arrest and remand of the accused. But, to give such a statement, there was no evidence before the court to show that the statement given by the 1st accused was to enable the recovery of MO1 under Section 27 of the Evidence Act. The trial court also found that the prosecution had not proved the entire incident took place at the scene of the occurrence and even the scene of occurrence is also different in the version of the prosecution witnesses.

In the above circumstances, this Court is of the view that the finding entered by the trial court requires no interference.

Accordingly, the appeal stands dismissed as merit less confirming the judgment of the trial court.

K. THANKAPPAN, JUDGE.

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